2005 LEGISLATIVE SESSION

Report on Enacted Legislation Related to Land Use Planning

Nevada Division of State Lands
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On July 7th, 2005

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SENATE BILLS

SB 52 Revises code enforcement procedures NRS 171, 268

Existing law authorizes counties and cities to designate certain persons to prepare, sign and serve citations on people accused of violating a county or city ordinance. (NRS 171.17751) Existing law further authorizes cities to provide by ordinance for the imposition of a civil penalty for the violation of an ordinance instead of a criminal sanction. (NRS 268.019)

- **This bill authorizes additional persons charged with the enforcement of county or city ordinances to prepare, sign and serve citations for violations of county or city ordinances.**

- **This bill also increases the maximum civil penalty that a city may impose for violation of a city ordinance ordering the owner of commercial property to repair, safeguard or eliminate a dangerous structure or condition or to clear certain debris, rubbish and refuse to protect the public health, safety and welfare from $500 to $1,000.**

Existing law authorizes cities to adopt procedures for ordering an owner of property to repair, safeguard or eliminate a dangerous structure or condition or to clear certain debris, rubbish and refuse to protect the public health, safety and welfare. (NRS 268.4122)

- **This bill adds litter, garbage, abandoned or junk vehicles and junk appliances to the list of items that a city governing body may order a property owner to remove to protect the public health, safety and welfare.**

- **This bill requires that, if a county board of health or district board of health has adopted a definition of garbage, the ordinance must use such definition.**

- **This bill also adds the welfare of the general public and the failure to meet minimum maintenance requirements as factors when determining whether a dangerous structure or condition exists**.

Existing law authorizes various persons to remove abandoned vehicles from public property under certain circumstances. (NRS 487.230)

- **This bill authorizes additional persons charged with the enforcement of county or city ordinances to remove abandoned vehicles from public property under certain circumstances.**

PLANNING IMPACT: *Will enable local jurisdictions to expand code enforcement activities to additional staff and increase revenue to support such duties through increased fines. It also reduces the need for an official code enforcement officer position to conduct enforcement*

related functions. *These changes may require minor changes to a county's ordinance in its enforcement/compliance sections.*
Provisions related to the abatement of garbage and litter may require minor ordinance changes to implement.

SB 70 Expands the scope of public land review activities NRS 218

Existing law establishes the powers and duties of the Legislative Committee on Public Lands. (NRS 218.5367)

- **This bill expands the role of the Committee in the review and comment on any matter relating to the preservation, conservation, use, management or disposal of public lands, which the Chairman of the Committee or a majority of the members of the Committee considers appropriate.**

PLANNING IMPACT: *Enables the Committee to better serve Nevada through a more comprehensive review and authority process.*

SB 325 Changes to Common Interest Communities NRS 116

Existing laws pertaining to common interest communities lacked certain provisions related to water usage, design requirements and other procedural components.

This law relating to common-interest communities; requiring persons who act as community managers to hold certificates; requiring persons who conduct studies of the reserves of associations to hold permits; providing for the regulation of such persons by the Commission for Common-Interest Communities; revising provisions governing the management of associations; requiring the Commission to adopt certain regulations relating to associations; making certain technical changes to the organization of the provisions governing common-interest communities; making various other changes related to common-interest communities; providing penalties; and providing other matters properly relating thereto.

Among the changes made are those:

- **That prohibit the exclusion of drought tolerant landscaping by owners unless otherwise required by conditions of a past zoning approval or located in a park green type area.**

- **That do not prohibit a local government from imposing different requirements and standards regarding design and construction on different types of structures in common-interest communities. For the purposes of this subsection, a townhouse in a planned community is a different type of structure from other structures in common-interest communities, including, without limitation, other structures that are or will be owned as condominiums or cooperatives.**

- **That changes exemption requirements for common interest communities if their function is limited to ; landscaping, flood control, rural agricultural residential common interest community and; Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.**

PLANNING IMPACT: *Enables local and state government to better address common interest communities and their potential impacts through more concise regulations. Promotes water conservation techniques through the protection of drought tolerant landscaping.*

SB 326 Changes the process of eminent domain NRS 37, 279

Existing law lacks specific time requirements for processing eminent domain claims and omits provisions that ensure open space lands and associated water rights be used entirely for open space purposes.

- **This law changes the public purposes and process for which the right of eminent domain may be exercised by requiring that;**

- **An agency may not exercise the power of eminent domain to acquire a parcel of property or group of contiguous parcels of property that is more than 40 acres in area for the purpose of open-space use unless:**

  - **Before the governing body of the agency votes to commence an action in eminent domain to acquire the property, the agency has negotiated for a period of not less than 24 months beginning on the date on which the agency provided the written offer of compensation to the owner of the property.**

  - **The use of property for the purpose of open-space use conforms with:**
    (1) Master plan adopted pursuant to chapter 278 of NRS;
    (2) Zoning regulations adopted pursuant to chapter 278 of NRS; and
    (3) Open-space plan adopted pursuant to chapter 376A of NRS;

  - **Each acre of the property is necessary and will be devoted to open-space use for not less than 50 years**

  - **Any water rights acquired must be used for open space purposes.**

  - **Specifies terms for negotiation to include; a written offer of compensation with an appraisal describing; intended use of each acre, use of any water rights included, mitigating damages to property, plus damages, if any.**

PLANNING IMPACT:

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Will increase administrative and financial burden on public agencies pursuing open space through eminent domain in parcels larger than 40 acres.

Will limit public agencies ability to act swiftly on parcels that contain both high values for open space uses and more intensive development projects whereas private third party developers are not restricted by timing limits. Restricts the possible use of eminent domain even on the most critical public benefit projects.

Those local governments without master plans, zoning ordinances or open space plans will not be able to utilize eminent domain for open space purposes.

May require additional verification with plans and ordinances for local use of eminent domain. A few counties/cities may strengthen master plan language related to open space to bolster its future use of eminent domain.

SB 394 Taxation changes for golf courses NRS 361

Existing law does not provide for open space assessment for golf courses or related facilities. Existing exemptions for open space are limited to the purposes of the preservation of which use *would conserve and enhance natural or scenic resources, protect streams and water supplies, maintain natural features which enhance control of floods or preserve sites* designated as historic by the Office of Historic Preservation of the Department of Cultural Affairs.

- **This law will change the definition of open space suitable for deferred taxation by adding the real property of a golf course to the list of acceptable open space uses. This appears to result in the decrease of taxation to these lands by up to 65% based upon the number of user days per year and the optimal number per year.**

- **This bill also enables local governments to identity through their master plans additional designations of lands that achieve the goals of open space through deferred taxation.**

- **Local governments are also given the authority to develop application procedures for the acceptance of any " additional" land designations that meet open space goals.**

PLANNING IMPACT:

Reduces the importance of the open space designation to existing purposes by providing more incentive for developers of courses to develop in areas that might otherwise fill other master plan needs for a community, including traditional open space. Taxation policies are one of many land use tools used to encourage or encourage certain uses related to achieving master plan goals. For existing golf courses this bill will support a popular land use in Nevada, one that adds aesthetic value to the arid landscape. While golf courses do not necessary preclude more intensive development in the future, they do serve an "oasis effect" in the interim.

Will reduce revenue in communities with golf courses drastically as the value of the land that is taxed may decrease 80-90%. Local government staff will need to develop methods for acquiring golf course usage data for taxation purposes. Local planning staff may face a time burden if additional "open space like" master plan designations are sought by the county.

This law assumes that local open space values include golf courses. This may or may not be the case based on local values. It may be viewed simply as a land and water intensive commercial venture that is for profit or as a land use that meets multiple community goals and is viewed as achieving similar goals as open space.

SB 400 OHV Regulations NRS 360

Existing laws do not require registration "green" stickers or OHV permits for use on or off highway.

- **This law provides for the issuance of certificates of operation for off-highway vehicles by authorized dealers for use only under limited circumstances.**
- **This law will enable OHV users to request an OHV sticker from a retailer for use of an OHV on a state or county highway authorized by such jurisdiction for such use. This law does not require OHV users to purchase a certificate to operate off-road, to cross a highway, to load or off-load along the highway.**
- **This law allows for the use of designated highways up to 2 miles for access to designated OHV trails if proper lighting and safety gear is used. It prohibits the use of interstates by OHV's.**
- **Local government may designate paved roadways as OHV corridors with the concurrence of NDOT and with specific equipment and safety requirements. These paved roadways connections must be in conjunction with existing off highway trail systems.**
- **Local government may also restrict the use of OHV's on unpaved county roadways, public lands or other trails, if it has jurisdiction over the road/trail corridor or area.**
- **Exemptions for this law include OHV use for agricultural use, public agency purposes, or other emergency uses as authorized by law enforcement officers.**

PLANNING IMPACT:

Requires counties to map appropriate paved roadways for OHV use in order to expand OHV use to paved roads. Mapping and planning may require assistance from State Land Use Planning Agency Office, or expansion of local staffing levels and expertise.

This bill will not apply to a majority of OHV users. This law does not require all off highway vehicle operators to obtain operating certificates except under certain conditions. This law still allows for the crossing of or loading near existing highways and operation of OHV's on most public lands. The bill primarily applies to users of specific off highway trail networks that require a short highway connection to facilitate the trail use.

This bill may also provide economic development and growth in communities of improved access to trail networks such as the "Silver State OHV Trail".

SB 421 Open meeting laws/ requirements for recording NRS 241, 278.890

- **This law requires the recording or transcription of all public meetings by public bodies covered by existing open meeting laws for both public and private meetings with some exceptions.**

PLANNING IMPACT:

This bill may add operating cost to counties/cities not already recording its public meetings.

SB 424 Abatement procedures for abandoned nuisances NRS 268

Existing laws for nuisance activity abatement enforcement requires a two year time period with 3 or more violations before a city can act to remove or force an owner to remove the nuisances.

- **This law allows cities (in counties over 100,000) to abate abandoned nuisances by reducing non-compliance time period from 2 years to 12 months and reduces the number of nuisance activities from three to two before actions can be taken against the owner. The abandoned nuisance activities can include a vacant property with an existing structure that contains 2 or more nuisance activities or is associated with a person that has caused or engaged in 2 or more such activities on or within 100 feet of the property.**

PLANNING IMPACT:

This law will decrease the time period and number of nuisance violations required by official abatement proceedings thus improving the ability of larger cities to require the abatement of nuisance or enable the city to assess the property in question or abate the nuisances itself.

Depending upon the city's code enforcement funding and staffing this law may increase the number of nuisance cases while providing for a faster response to citizen complaints. It may also enable local government to address problems before they become too serious and spawn other illegal activities. It may also require the expansion of compliance staffing.

ASSEMBLY BILLS

A.B. 125 Clarifies role of PUC in tentative maps for subdivisions NRS 278, 704

Existing law requires a planning commission or governing body of a city or county, as applicable, that receives a tentative map to forward to the Public Utilities Commission, for informational purposes only, a copy of the tentative map if the subdivision will provide water or services for disposal of sewage. (NRS 278.335)

- **This bill resolves the inconsistency in existing law relating to the role of the Public Utilities Commission with respect to the approval of proposed subdivisions that provide water or sewer service by removing the provision that states that the Public Utilities Commission receives tentative maps for informational purposes only.**

Existing law also requires the Public Utilities Commission to review applications for such subdivisions to determine the continuity and adequacy of the water supply or sewer service and prohibits the planning commission or governing body of the city or county, as applicable, from approving an application for such a subdivision until written approval has been given by the Public Utilities Commission. NRS 704.6672)

Existing law also requires that, as a requirement for the filing of a final map, a subdivider of land must provide certificates from the Health Division of the Department of Human Resources or district board of health and the Division of Water Resources of the State Department of Conservation and Natural Resources verifying that those agencies approved the final map with regard to sewage disposal, water pollution, water quality and quantity and water supply facilities.

- **This bill prohibits the Health Division of the Department of Human Resources or district board of health and the Division of Water Resources of the State Department of Conservation and Natural Resources from certifying their approval of a final map for a subdivision that provides water or sewer service without obtaining written verification from the Public Utilities Commission that the Commission has approved the final map with regard to the continuity and adequacy of the water supply or sewer service for the proposed subdivision.**

PLANNING IMPACT:

This bill will streamline and clarify the final subdivision map process as it relates to the provisioning of water. This bill should result in minimal burden placed on local governments.

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A.B. 143 Establishes eminent domain procedures for redevelopment agencies

Existing law allows a redevelopment agency to exercise the power of eminent domain to acquire property for a redevelopment project. (Chapters 37 and 279 of NRS)

- **This bill requires a redevelopment agency to follow certain procedures before exercising the power of eminent domain to acquire property for a redevelopment project, such as**
  - **negotiating in good faith with a property owner and attempting to reach an agreement with the owner regarding the amount of compensation to be paid for the property.**
  - **A redevelopment agency is required to provide a written offer of compensation and notice to an owner that the property is necessary for redevelopment as well as other information.**
  - **This bill provides that an agency must give an owner at least 30 days to accept or reject a written offer of compensation before the agency may commence an eminent domain proceeding.**

Existing law allows an agency to prepare plans for the redevelopment of a "blighted area," which is currently defined as an area characterized by at least one of several factors set forth in NRS 279.388. (NRS 279.468)

- **This bill adds the environmental contamination of buildings or property and the existence of an abandoned mine to the factors which characterize a blighted area and;**
- **Increases the number of factors necessary to constitute a blighted area from one or more to at least four and;**
- **Adds various factors which characterize a blighted area if the subject of the redevelopment is an eligible railroad or facilities related to an eligible railroad.**

Existing law provides that in certain larger counties a redevelopment agency may exercise the power of eminent domain for a redevelopment project only if: (1) necessary to carry out the redevelopment plan; (2) the agency adopts a resolution of necessity; and (3) the agency complies with certain other requirements.

- **This bill makes those provisions applicable to all counties in this State.**

Existing law sets forth the public purposes for which the right of eminent domain may be exercised. (NRS 37.010)

- **This bill prohibits a governmental entity from exercising the power of eminent domain to acquire a parcel of property or group of contiguous parcels of property that is more than 40 acres in area for the purpose of open-space use unless certain conditions are met such as;**

- **An attempt by the entity to negotiate in good faith with the property owner for a period of not less than 24 months**

- **The use of the property conform to certain adopted plans and regulations**.

- **This bill also sets forth the conditions that an entity must meet in order to satisfy the requirement that the entity negotiate in good faith with the property owner.**

Senate Bill No. 326 of this session established the requirement that;

> If any governmental entity which has acquired property pursuant to chapter 37 of NRS fails to use the property for the public purpose for which it was acquired and seeks to sell the property within 15 years after the property is acquired, **the person from whom the property was acquired or his successor in interest must be granted the right of first refusal** to purchase the property for fair market value, which is deemed to be the amount paid for the acquisition of the property.

- **This bill amends this provision of Senate Bill No. 326 to provide that the provision does not apply to property that is acquired through the use of federal funds or purchased as an early or total acquisition at the request of the owner of the property.**

The amendment to this provision of Senate Bill No. 326 expires by July 1st 2007.

PLANNING IMPACT:

Overall this legislation increases the burden on local government agencies wishing to acquire larger open space parcels through eminent domain. Though seldom used in Nevada, these changes increase the difficulty of local and state government to acquire property through eminent domain, a long held tool for implementing projects of significant public benefit.

This bill Increases the number of required blighted factors for redevelopment projects to be evident for eminent domain from one to at least four factors, (including railroads or related facilities).

This law also increases the overall requirements for local governments to proceed with eminent domain procedures (on parcels over 40 acres) through minimum negotiation time periods, good faith negotiations standards, extends provisions restricting eminent domain to all counties not just larger ones, and requires right of first refusal on property seized by eminent domain but not acted on in its intended public purpose within 15 years.

These changes will enhance the ability of a private party to acquire property at an advantage over a public agency when there exists competing interests of a property by both the private and public sector especially when time is the most valuable commodity.

These changes may also increase the scrutiny within a public agency as to whether or not to pursue eminent domain for certain public projects such as open space or redevelopment of an area. This could result in better negotiations between parties for projects where the use of eminent domain is threatened by an agency.

This will require more scrutiny of intended public purposes, actual site conditions and local master plans and goals of an area prior to proceeding with eminent domain procedures.

A.B. 165 Continuance procedures in larger counties NRS 278

Existing law prohibits a planning commission in a county with a population of 400,000 or more (currently Clark County) from granting to an applicant more than two continuances on a matter, unless the planning commission determines that there is good cause for granting the additional continuances.

- **This bill clarifies that the limitation on the granting of continuances on matters before such planning commissions only applies to requests for continuances by the applicant or his authorized representative on behalf of the applicant or his authorized representative.**

- **The limitation does not apply to a request for a continuance by the applicant or his authorized Representative on behalf of an officer or employee of a city or county, a member of the commission or any owner of property that may be directly affected by the matter.**

- **If the commission grants a continuance to an applicant or his authorized representative for good cause shown or grants a continuance on behalf of the other persons for whom the applicant or his authorized representative may request a continuance, the person on whose behalf the continuance was granted is required to make a good faith effort to resolve the issues concerning which the continuance was requested.**

- **This bill defines "applicant" as the person who owns the property to which the application pending before the commission pertains.**

- **This bill also describes circumstances that constitute "good cause" for granting continuances on matters in excess of the limitation, which include circumstances relating to the matter that are beyond the control of the applicant or his authorized representative and the desire by the applicant or his authorized representative to revise plans or drawings, engage in negotiations concerning the matter or retain an attorney.**

PLANNING IMPACT:

This measure enables local government more time for the review of materials in complex land use cases. It also clarifies the continuance process for a more effective public hearings process.

A.B. 187 Master Plan amendments NRS 278

Existing law requires a city, county or regional planning commission to prepare and, after notice and a hearing, adopt a master plan for the city, county or region, as applicable.

Under existing law, a planning commission may amend the master plan and certify the amendment to the governing body.

Existing law also prohibits the inclusion of a plan or map as part of the master plan until it has been adopted as part of the master plan by the planning commission. (NRS 278.210)

- **This bill allows the governing bodies of local governments to establish a procedure by which the governing bodies may adopt minor amendments to the master plan without any action by the planning commission.**

  - **The minor amendments for which such a procedure may be used are limited to changes in boundaries to correct erroneously mapped geographical features, certain changes in the names of jurisdictions, agencies, departments and districts, and changes to reflect updated information based upon new or revised studies.**

Existing law prohibits a planning commission from amending the land use plan component of the master plan more than four times in a calendar year, except for changes in land use designated for a particular area which do not affect more than 25 percent of the area. (NRS 278.210)

- **This bill exempts minor amendments from that prohibition and therefore allows minor amendments to the land use component of the master plan more than four times in a calendar year.**

PLANNING IMPACT:

This change should decrease workload at the planning commission level on minor Master Plan Amendments to correct minor changes more rapidly with less cost and time to the county.

The change could result in the impairment to the public disclosure process if counties/cities are not prudent in implementing this requirement.

Will require counties to develop administrative policies to implement this change.

Reduces the checks and balances and advisory capacity between the planning commission and county commission/city council.

A.B. 425 **Changes to regional planning in larger counties that identify and enable various smart growth strategies.** **NRS 278**

Existing law is vague for local government in larger counties to adopt widespread changes to promote smart growth strategies such as mixed use, master planned communities, transit oriented development, development of Brownfields as well as gaming districts.

This legislation makes major changes to statute in NRS 278 enabling regional coalitions in larger counties to adopt new development strategies to effectively address rapid growth.

- **This law requires regional planning agencies to study and implement such strategies and offer incentives for doing so. This law also changes the city charter for several larger cities to clearly permit this expanded redevelopment role.**

- **This bill also specifically adds schools to the general category of "public facilities" when considering growth management strategies and potential impacts to community assets.**

- **In addition this bill requires regional plans to address using off site parking and transit strategies for large scale commercial development, and the study and identification of public access and sidewalks for pedestrians, and facilities.**

- **Regional plans shall address, if applicable, mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts.**

- **This bill adds the requirement for a developer-sponsored neighborhood meeting to explain the request for a master plan amendment prior to any required public hearing (in a county whose population is 100,000 or more) including, without limitation, a gaming enterprise district.**

- **Notice of such a meeting must be given by the person requesting the proposed amendment to:**

    - **Each owner, as listed on the county assessor's records, of real property located within a radius of 750 feet of the area to which the proposed amendment pertains;**
    - **The owner, as listed on the county assessor's records, of each of the 30 separately owned parcels nearest to the area to which the proposed amendment pertains, to the extent this notice does not duplicate the notice given pursuant to paragraph (a); and**
    - **Each tenant of a mobile home park if that park is located within a radius of 750 feet of the area to which the proposed amendment pertains. The notice must be sent by mail at least 10 days before the neighborhood meeting and include the date, time, place and purpose of the neighborhood meeting.**

- **Regional plans must consider existing views and access to solar resources by studying the height of new buildings which will cast shadows on surrounding residential and commercial developments. And to reduce the consumption of energy by encouraging the use of products and materials which maximize energy efficiency in the construction of buildings.**

PLANNING IMPACT:

This law will improve the "planner's toolbox" in larger counties by improving the implementation and coordination of urban services related to transit, mixed use development, master planned communities.

This law also improves citizen participation of larger master plan amendments by requiring a neighborhood meeting by the developer be held prior to any public hearing. This change may identify community concerns prior to public hearings that will enables planners and decision makers the ability to make necessary changes to address any impacts or concerns missed through the normal development review process.

These changes will require additional research and changes to a regional plan to address certain items more carefully such as; pedestrian access, smart growth options, impact to schools and energy conservation and natural lighting of new buildings.

AB 437 Rent control at mobile home parks with filed applications NRS 118

Existing laws protect residents of a mobile home park from rent increased only under certain circumstances if the owner is seeking a change in land use.

- **This bill limits the ability of a landlord by: not allowing increase the rent of any tenant for:**
  - **For 180 days before [applying] filing an application for a change in land use, permit or variance affecting the manufactured home park ; or**
  - **At any time after filing an application for a change in land use, permit or variance affecting the manufactured home park unless:**
    - **(1) The landlord withdraws the application or the appropriate local zoning board, planning commission or governing body denies the application; and**
    - **(2) The landlord continues to operate the manufactured home park after the withdrawal or denial.**

PLANNING IMPACT:

Impacts of this change on local governments would be minimal. It may require on occasion the planning department to identify the application filing date of an applicant for any potential change in land use sought by the owner of a mobile home park. It may also require clarification of a change in land use.

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